



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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Naomi L. Bolton
Land Use Coordinator

Office Hours:
Monday
Tuesday
Thursday
8 AM – 4:30 PM

ZONING BOARD OF ADJUSTMENT
MINUTES
NOVEMBER 2, 2004
****DRAFT COPY****

PRESENT: Tim Galvin, Chairman; Forrest Esenwine, Vice Chairman; Jack Dearborn; June Purington; Leon Methot; Naomi L. Bolton, Land Use Coordinator.

GUESTS: Penny Savage; Dale R. Constant; Tom & Beverly Mauldin; Heidi Nippe; Ricky Houde; Bob Bailey; Ginger Esenwine; Chip Meany; Attorney Andrew H. Sullivan; D.J. Farrell; Jude Charpentier; Alan Lesmerises; Karen Lesmerises; Jan Smith; Paul Apple; Ron Nippe; Joseph Nelson; Robert Nelson; Danny Hicks; Ron & Cindy Hoekstra.

I. CALL TO ORDER:

Chairman Tim Galvin called this meeting to order at 7:30 PM at the Weare Town Office. Chairman Galvin asked each member to introduce themselves.

II. ADMINISTRATIVE ITEMS:

INSTITUTE TIME LIMIT: Chairman Galvin stated that due to the length of the agenda he wanted to try to institute a 20 minute rule per hearing.

APPLICATION DROP OFFS AND APPOINTMENTS: Chairman Galvin stated that recently there have been some issues with incomplete applications being dropped off at the office when the Land Use Coordinator is not in the office. In an effort to streamline the process Chairman Galvin encouraged all to make an appointment for the drop off of any zoning application. By doing this, the applicant can go over the checklist at time of drop off and it will save time for all parties involved.

USE OF OFFICIAL FORMS: Chairman Galvin stated that all the zoning board application forms can be downloaded from the web site. The board would like for all applicants to use the official forms and if the applicant chooses to add supplements that can be done but the official forms MUST still be used.

APPROVAL OF OCTOBER 5, 2004 MINUTES: June Purington moved to approve the October 5, 2004 minutes as amended, Leon Methot seconded the motion, all in favor.

III. PUBLIC HEARINGS:

Case #2004 Robert Todd (Owner: Wolf Cota) – Rehearing
Variance, Article 18, Section 18.2.5
Applicant is requesting permission to permit the placement of a leaching area component of a septic system within 50 feet of surface water.
Tax Map 110-087 75 Daniels Road (Private)

Naomi informed the board that there is a faxed request from Attorney Sullivan requesting a continuance of this rehearing as Mr. Todd was not available. As it turned out, Attorney Sullivan was present as was Rick Kohler from Robert Todd's office. Chairman Galvin asked Attorney Sullivan if they would like to proceed as both parties were represented. Attorney Sullivan asked

Bob Nelson, concern resident, father is abutter, also filed the appeal based on similar concerns that Mr. Farrell raises. Mr. Nelson handed the board digital picture copies of how the property looks today, which will further explain the neighborhoods concerns for allowing Mr. Cota the ability to build a septic system which will require “regular care and maintenance” as there doesn’t appear to be any regular care and maintenance to the current property now.

Chairman Galvin stated that he has done some research on his own regarding how the assessing records are done in Town. Mr. Craig Nichols gave Chairman Galvin copies of the notes that were made when he went out on site to assess the property, which showed just what the two gentlemen have raised for issues. It appears that the owner filed paperwork in an effort to get his assessment lowered. The notes indicate that the property was lowered from a camp to basically a building for storage. Secondly, Chairman Galvin researched abandonment of property and it would appear that this property could be deemed as abandoned.

At this point, Mr. Sullivan interrupted Chairman Galvin and explained that what they were renotified for a hearing to focus specifically on three issues, 1) existing 3 bedroom dwelling versus 2 bedroom camp; 2) existing septic system being replaced versus no septic system; and 3) a discussion of soils. Mr. Sullivan stated that the conversation is getting beyond what was notified to be discussed and the board is not allowed to discuss that. It is a discussion for another hearing or day.

Chairman Galvin disagreed and felt it all had to do with this board's decision. Mr. Esenwine stated that this board must strictly adhere to the rehearing notification. If the applicant wants to upgrade the building then I'm sure this board will be hearing it again.

Then Chairman Galvin asked if there were any:

Approving Abutters: NONE

Disapproving Abutters: Joseph Nelson, abutter discussed the difference of no septic and the system that was being requested.

Other Boards: NONE

Public At Large: NONE

Chairman Galvin closed this hearing at 8:30 PM

CASE DECISIONS:

Point #1: Forrest Esenwine moved to accept point #1 in regard to a 3 bedroom dwelling versus a 2 bedroom camp, Leon Methot seconded the motion. Discussion: Mr. Esenwine stated that he doesn't think that has any bearing on what the board was asked for at the original hearing. Chairman Galvin stated that he is not in lock step with Mr. Esenwine's logic and felt it was certainly part of the discussion. Vote: 1 in favor (Galvin) and 4 opposed (Methot, Purington, Dearborn, Esenwine). Point #2: Forrest Esenwine moved to accept point #2 in regard to septic system versus no septic system, Leon Methot seconded the motion. Discussion: Mr. Esenwine stated that again he didn't believe it has any bearing on the decision. June Purington disagreed and stated because the applicant asked for a replacement system. Chairman Galvin stated that there was no system and is no system simply wasn't the fact. Jack Dearborn stated that there was no benefit for any previous system because none of the design criteria talked about replacement, so from a performance standard it is mute. Vote: 1 in favor (Galvin) and 4 opposed (Methot, Purington, Dearborn, Esenwine). Point #3: Forrest Esenwine moved to accept point #3 with regard to the discussion of soils, Leon Methot seconded the motion. Discussion: Jack Dearborn responded that the soils are not unsuitable for the use. The soils as indicated on the plan were what were there. Vote: 0 in favor, 5 opposed (Methot, Purington, Dearborn, Galvin, Esenwine). Forrest Esenwine moved that the request for rehearing of Case #2004 be denied, Leon Methot seconded the motion. Vote: 5 in favor (Methot, Purington, Dearborn, Galvin, Esenwine), therefore original decision stands.

Case #2404

Alan & Karen Lesmerises

Administrative Appeal, Section 3.4.1

Applicant is requesting permission to replace a mobile home with a modular cape.

Tax Map 412-083

40 Boisvert Road

Alan & Karen Lesmerises were present for this hearing. Chip Meany, Code Enforcement Officer for the Town was also present. Mrs. Lesmerises explained that they purchased this lot in August of 2004. The lot had a 53' x 14' mobile home on the property when they purchased it. They want to replace the mobile home with a modular cape and were denied by the Code Enforcement Officer. They are currently living in the mobile home in Northwood. Mr. Meany explained to the board that it is his interpretation that changing from a mobile home to a modular home is a change of use. Article 3.4.1 states that "this zoning ordinance shall apply to any alteration of a building for use or purpose or in a manner which is substantially different from the use to which it was put before alteration", therefore requiring zoning board approval for the change. Mrs. Lesmerises read the following letter that was submitted

"We do not understand why we should not be allowed to replace a mobile home with a wood frame structure which has greater value and should increase rather than decrease property value. We do realize the modular cape we propose will take up more room and will require a partial or full foundation on this small 0.37 acre lot. Please find enclosed a plan that our surveyor, Robert Palmer, has devised to fit the modular cape and a 24' x 24' garage on the lot.

The well, septic, driveway and workshop are already in place. We cannot afford or desire to disturb what is good. The new garage would allow us to work on a car if emergency repairs were needed.

We feel we will be upgrading the property by constructing a wood frame structure. We are temporarily living in the mobile home that was removed from the property, but our hope is to start construction as soon as possible. We chose a modular because it would expedite our move to Weare from Northwood. It would allow us to start excavation before the ground freezes.

The new structure is simply replacing a residence on the same small lot and would adhere to the setbacks governed by the Town."

Being there were no further comments or questions, Chairman Galvin asked for:

Approving Abutters: NONE

Disapproving Abutters: NONE

Other Boards: NONE

Public At Large: NONE

Chairman Galvin then closed this hearing at 9:09 PM.

CASE DECISIONS:

Jack Dearborn moved to uphold the application and overturn the Code Enforcement Officer's decision, June Purington seconded the motion, unanimous vote favor (Methot, Purington, Dearborn, Galvin, Esenwine).

Case #2504	Robert D. Bailey
	Variance, Article 4
	Applicant is requesting permission to access this property by way of an abutting property.
	Tax Map 407-153.001 Deering Center Road

Bob Bailey was present for this hearing. Mr. Bailey explained to the board that in 2002 he went to Everett Stone, Code Enforcement Officer to obtain a building permit on this lot. Mr. Stone denied Mr. Bailey indicating that the driveway must come off the frontage that was used to create the lot. Mr. Bailey filed for an administrative appeal against Mr. Stone's decision. The zoning board heard the appeal and upheld the Code Enforcement Officer's decision. Mr. Bailey filed for a rehearing which was denied. Mr. Bailey then hired an attorney and filed in Superior Court. In Superior Court, Bill Drescher (Town Counsel) stated to the judge that he felt the local level had not been exhausted, because the applicant (Mr. Bailey) hadn't filed for a variance, which is why he is here. Mr. Bailey explained that to use the frontage that was used to create the lot would require a wetlands crossing. On August 16, 2004 the State of NH DES sent a letter stating that on July 27, 2004 they conducted a site inspection for the purpose to provide comment on the proposed crossing and to review alternatives. Basically, DES does not consider the driveway

construction to be the least impacting alternative. The applicant is required to demonstrate avoidance first and then demonstrate minimization to jurisdictional wetlands. DES strongly recommends reviewing other options to provide access via the existing gravel drive located on a 50 foot ROW through the parcel identified as 407-148. Mr. Bailey also has been in contact with our own Conservation Commission which concurred with the letter from DES indicating that the best alternative for access is over the existing driveway. Mr. Bailey stated that he has also met with and applied to the State of NH for a driveway permit at the existing location. The State amended driveway permit has not been received yet but applied for. Mr. Bailey went through the five hardship points as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: The use contemplated is a residential dwelling already permitted by the ordinance.
2. That the granting of the variance will not be contrary to the public interest because: The proposed driveway location will have a better sight line, and will have lower impact on wetlands, because the proposed location does not impact wetlands, but a driveway on the lot frontage would necessarily cross wetlands.
- 3aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: The lot frontage lies on a curve, where it would be more dangerous for an entry, and also DES has issued an opinion (attached) that another access be sought.
- 3bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: A driveway within the frontage impacts on wetlands, and has less safe sight lines, neither of which conditions can be avoided without an area variance.
4. That through the granting of relief by variance substantial justice will be done because: There will be no impact on any abutter or the Town, and the driveway across the abutting property was reserved just for this purpose.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: Residential use is in fact permitted in this zone, as are driveways, and the driveway easement across the abutting property was reserved just for this purpose.

Approving Abutters: NONE

Disapproving Abutters: NONE

Other Boards: NONE

Public At Large: Penny Savage stated that she is the owner of the property which the right of way accesses over. She stated that she is in favor of the best use with the least impact. The only question she has was a response to how many houses can use one the driveway. She currently accesses her existing house by the existing driveway. The owners of 731 Deering Center Road access the same way. This would be the third house, but she also has a vacant lot that would have the ability to access from the same, meaning worse case 4.

Mr. Bailey further explained that when this lot was created in 1995 the plan presented to the Planning Board clearly indicated that access to this lot would be via the easement for private driveway recorded at book 5094, page 1367.

Being there were no further comments or questions, Chairman Galvin closed this hearing at 9:50 PM.

CASE DECISIONS:

Point #1: Jack Dearborn moved to accept point #1, June Purington seconded the motion. Discussion: none Vote: 3 in favor (Dearborn, Galvin, Esenwine) and 2 opposed (Methot, Purington). Point #2: Jack Dearborn moved to accept point #2, Chairman Galvin seconded the motion. Discussion: none Vote: 3 in favor (Dearborn, Galvin, Esenwine) and 2 opposed (Methot, Purington). Point's #3aa & 3bb: Chairman Galvin moved to accept points 3aa & 3bb, Jack Dearborn seconded the motion. Discussion: none Vote: 2 in favor (Dearborn, Esenwine)

and 3 opposed (Methot, Purington, Galvin). Point #4: Chairman Galvin moved to accept point #4, Jack Dearborn seconded the motion. Discussion: none Vote: 1 in favor (Dearborn) and 4 opposed (Methot, Purington, Galvin, Esenwine). Point #5: Jack Dearborn moved to accept point #5, Chairman Galvin seconded the motion. Discussion: none Vote: 1 in favor (Dearborn) and 4 opposed (Methot, Purington, Galvin, Esenwine). Leon Methot moved to grant the variance for Case #2504, June Purington seconded the motion. Mr. Esenwine stated that according to state statute all five (5) points must be met in the affirmative to be granted the relief. Vote: 1 in favor (Dearborn) and 4 opposed (Methot, Purington, Galvin, Esenwine).

Chairman Galvin stated that due to the late hour, he moved to continue the last two cases to Tuesday, November 16th at 7:30 PM, Leon Methot seconded the motion, unanimous vote in favor. Mr. Ron Nippe stated that he was told due to having his in-laws with him he could be first on the agenda this evening and asked if he could be heard first. The board didn't have a problem with that and indicated that Case #2704 would be moved to first and Case #2604 would be second on the agenda.

Case #2604 Acer Corporation (Owner: Frank Piazzza)
Variance, Article 17, Section 17.1.1
Applicant is requesting permission to build a single family home on a private road.
Tax Map 105-040 & 105-041 Winter Road (Private)

This case was continued to November 16, 2004 after Case #2704.

Case #2704 Reynold & Heidi Nippe
Special Exception, Article 19.1.10 and
Variance, Article 19.1.10.2
Applicant is requesting permission to have the in-law apartment attached to the detached garage rather than the home structure.
Tax Map 110-089 71 Daniels Road

This case was continued to November 16, 2004 at 7:30 PM.

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V. ADJOURNMENT:

As there was no further business to come before the board, Forrest Esenwine moved to adjourn 10:08 PM, Leon Methot seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator